

December 31, 2003

The Honorable Maura D. Corrigan, Chief Justice
and the Justices of the Michigan Supreme Court
c/o Supreme Court Clerk
P.O. Box 30052
Lansing, Michigan 48909

Re: Administrative File No. 2003-47
*In re Petition for Administrative Order Or Court Rule
Establishing Inactive Asbestos Docketing System*

Dear Chief Justice Corrigan:

AARP takes this opportunity to submit comments opposing the proposal set forth in the subject petition to create “a consolidated inactive asbestos docketing system for claimants with nonmalignant asbestos-related conditions who evidence no physical or functional impairment, whereby such claimants, upon discovery of such condition, may file a notice with the Wayne County Circuit Court and serve all defendants, thereby tolling the statute of limitations, and remain on the inactive docket until objective medical criteria indicate that the asbestos-related condition has developed into a physical injury.” AARP opposes the petition because in pursuit of its laudable goals of “improv[ing] the asbestos litigation environment” and “help[ing] ensure that resources spent in litigation are directed at those most deserving of compensation - the truly sick,” *In Re Petition For An Administrative Order* (hereinafter “Petition”) at 2, if implemented it may also adversely affect the rights of those claimants placed on the inactive docket as those claimants age.

AARP is a nonpartisan, nonprofit membership organization of people age 50 or older dedicated to addressing the needs and interests of older Americans. Approximately 52.8 per cent of Michigan residents over age 50, more than 1.4 million people, are AARP members. Nationally, almost half of AARP's 35 million members are in the work force. AARP supports the rights of older workers and strives to preserve the legal means to enforce them. Since the physical injuries associated with asbestos-related conditions can arise years or even decades after exposure, AARP has a direct interest in this proposal, which will affect the ability of many older Michigan workers to preserve and enforce their rights regarding compensation for employment-

related injuries.

The heart of the proposal presented in the Petition is to place all “[i]ndividuals who cannot meet certain objective medical criteria ... on an inactive docket with statute of limitations being tolled, and all discovery stayed.” Petition at 9. Such individuals “are moved to the active civil docket when they present credible medical evidence of impairment.” *Id.* The Memorandum of Law In Support of Petition To Establish A Court Rule Or Administrative Order Creating A statewide Inactive Asbestos Docketing System (hereinafter “Memorandum”) explains at 16 that the goals of the proposal are “to protect the rights of the most seriously injured and functionally impaired asbestos plaintiffs; preserve scarce judicial resources; preserve the resources of the shrinking pool of defendants; and to prevent future corporate bankruptcies due to asbestos-related litigation.” Thus, while the proposal’s potential benefits to the “truly sick,” the courts, and the defendants are clearly set forth in the Memorandum, the potential harm to the not-yet-sick through curtailment of their rights to litigate upon discovery of their asbestos-related conditions is left to speculation.

At bottom, the proposal would relieve the defendants of any current liability for having caused the claimants asbestos-related condition by knowingly exposing workers to this hazardous material while at the same time clearing the active state court dockets. Additionally, the defendants presumably would be relieved of any responsibility for providing prophylactic treatments to prevent the occurrence of physical manifestations of the asbestos-related condition in those claimants who are not yet sick. The proposal effectively would preclude asymptomatic claimants from seeking such relief. Further, the right to seek prospective relief for the mental anguish of claimants and their family members associated with not knowing, perhaps for many years, when or even if the knowing exposure to asbestos will trigger a devastating and likely fatal illness would be completely foreclosed.

Since the physical injuries that can arise from even a single exposure to asbestos can take years and commonly decades to manifest themselves, the proposal to stay all discovery until there is “objective medical evidence” of physical injury effectively will preclude most not-yet-sick claimants from proving their claims. Without the right to conduct discovery in a timely manner rather than years after the occurrence of events that undoubtedly will be disputed in litigation, the proposed tolling of the statute of limitations does little to further the interests of those claimants it seems intended to benefit.

In summary, the proposal, which defers, perhaps for years or even decades, litigation of the claims of exposed, but not-yet-sick plaintiffs and permits no discovery in such cases until it is very unlikely that there will be any evidence left to be discovered, while at the same time requiring nothing of defendants hardly fosters the perception that justice is being done. In fact, the proposal, if adopted, will unfairly penalize and place at a significant litigation disadvantage those plaintiffs to whose cases it applies, while conferring on defendants the significant advantage of delaying and likely denying any reckoning whatsoever. In short, the proposal is the embodiment of the maxim that justice delayed is justice denied.

For the foregoing reasons AARP opposes the petition.

Sincerely,

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